



I hereby certify this is a true copy of an Order dated
NOV 17, 2023
Landlord and Tenant Board

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Jagoon v Luken, 2023 ONLTB 75546

Date: 2023-11-17

File Number: LTB-L-050839-23

In the matter of: 178 Wright Crescent
Niagara on the Lake ON L0S1J0

Between: Susan Esther Jagoon and Peter Jagoon Landlords

And

Randolf Gary Luken and Tenants
Chance white Luken

Susan Esther Jagoon and Peter Jagoon (the 'Landlords') applied for an order to terminate the tenancy and evict Randolf Gary Luken and Chance white Luken (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The Landlords also claimed charges related to NSF cheques.

This application was heard by videoconference on November 8, 2023.

The Landlords and the Tenant, Randolf Gary Luken ("RGL"), attended the hearing.

Determinations:

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,500.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$15,000.00. RGL agreed with the amount of arrears.
7. The Landlords is entitled to \$60.00 to reimburse the Landlords for administration charges and \$42.00 for bank fees the Landlords incurred as a result of 6 cheques given by or on behalf of the Tenants which was returned NSF.

8. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlords collected a rent deposit of \$2,500.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
10. Interest on the rent deposit, in the amount of \$53.08 is owing to the Tenants for the period from January 3, 2023 to November 8, 2023.

Section 83 Considerations

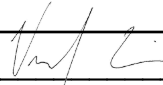
11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
12. RGL seeks an opportunity to preserve the tenancy and proposes paying the new rent that comes due and \$1,250.00 to \$1,500.00 each month towards the arrears until the arrears are paid up.
13. The tenancy commenced on February 1, 2023.
14. RGL testified he was advised by his doctor to stop working due to health issues in May 2023 and he underwent heart surgery on September 15, 2023. He began working recently and his monthly income is approximately \$7,000.00. The other Tenant is not employed due to health issues.
15. RGL testified that his monthly expenses, inclusive of rent, is \$3,505.00. Subtracting the expenses from his income, RGL would be left with \$3,495.00. When questioned why he cannot pay the Landlords more, RGL testified that he would like to enjoy his life and live well.
16. The Landlords opposed the payment plan proposal and sought a termination of the tenancy. The Landlord, Susan Esther Jagoon ("SEJ"), submitted that there had been numerous unsuccessful attempts to negotiate with the Tenants and that the Landlord is relying on the rent payments to pay their mortgage payments for the rental unit.
17. The Landlords are a small non-corporate Landlord who relies on the rental income to pay the mortgage and expenses on the rental property. While the RGL have means to pay the Landlords more, he testified he would rather use his funds for other nonessential purposes. This tenancy is relatively short and the Tenants have made no good faith payments since the application was filed. I find it would be unfair to issue a conditional order or delay eviction in the circumstances.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.

2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$15,288.00 if the payment is made on or before November 28, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after November 28, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before November 28, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlords \$10,892.44. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlords compensation of \$82.19 per day for the use of the unit starting November 9, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before November 28, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 29, 2023 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 28, 2023, then starting November 29, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after November 29, 2023.

November 17, 2023
Date Issued


Vicky Liu

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on May 29, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 28, 2023

Rent Owing To November 30, 2023	\$15,000.00
Application Filing Fee	\$186.00
NSF Charges	\$102.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlords owe the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$15,288.00

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$13,157.52
Application Filing Fee	\$186.00
NSF Charges	\$102.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$53.08
Less the amount the Landlords owe the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlords	\$10,892.44
Plus daily compensation owing for each day of occupation starting November 9, 2023	\$82.19 (per day)